

# COUNTY OF KAUAI

## Minutes of Meeting OPEN SESSION

Board/Committee:		Kaua‘i Police Commission	Meeting Date	September 23, 2016
Location	Līhu‘e Civic Center, Mo`ikeha Building – Meeting Room 2A/B		Start of Meeting: 9:05 a.m.	End of Meeting: 11:06 a.m.
Present	Chair Charles C.C. Iona; Vice-Chair Mary K. Hertog; Members: Catherine Adams, Savita Agarwal and Kevin Mince. Also present: Boards and Commissions Office Staff: Support Clerk Mercedes Omo; Administrator Jay Furfaro; Office of the County Attorney: Deputy County Attorney Peter Morimoto; Police Department: Chief of Police Darryl Perry; Assistant Roy Asher; Assistant Chief Robert Gausephol; Acting Sergeant Rolland Peahu; Officer of the Month: Cynthia Reider			
Excused	Commissioners: Gerald (Chip) Bahouth and Donald (Moki) Okami Sr.			
Absent				
SUBJECT	DISCUSSION			ACTION
Call To Order				Chair Iona called the meeting to order at 9:05 a.m. with five (5) Commissioners present constituting a quorum. He noted that Commissioners Bahouth and Okami are both excused from the meeting.
Public Testimony	None.			
Approval of the August 26, 2016 meeting minutes	During the discussion of the minutes, Vice Chair Hertog requested that a correction needs to be made on Page 7 under the action column relating to item number KPC 2016-017. The correct vote should read 4:0 and not 6:0. Staff acknowledged Vice Chair Hertog’s request and would make the correction. With no further comments or corrections to the minutes, Chair Iona called for a motion to approve the minutes as amended.			Commissioner Adams moved to approve the meeting minutes of August 26, 2016 as amended. Commissioner Agarwal seconded the motion. The motion carried 5:0.
Officer of the Month for September: Officer Cynthia Reider	Acting Sergeant Rolland Peahu read the recognition for Officer Cynthia Reider. Officer Reider was commended for the excellent service she provided to the Kaua‘i Police Department and the citizens of Kaua‘i. While off-duty, Officer Reider executed two search warrants for two separate cases that resulted in the seizure of two vehicles, recovery of stolen property, drug paraphernalia and the arrest of the suspects.			

SUBJECT	DISCUSSION	ACTION
	<p>Chief Perry presented Officer Cynthia Reider with a Certificate of Outstanding and Exemplary Service for her exceptional investigative and enforcement efforts that led to the recovery of stolen property in a burglary complaint and drug paraphernalia while assisting in a traffic collision investigation. Her efforts are a true reflection of her dedication and commitment in keeping the community safe from illicit drug activity.</p>	
<p><b>Recap of the 2016 HSLEOA Conference</b></p>	<p>Chair Iona, Vice Chair Hertog and Commissioner Agarwal commended Chief Perry and his staff for their hard work that went into organizing the conference. Chair Iona shared that the conference was one of the best he had ever attended and all of the presentations were great, especially the presentation on Marijuana Legalization and its unintended consequences.</p> <p>Chief Perry, speaking on behalf of his constituents, stated that they are not opposed to medical marijuana because there are individuals out there who truly need it for debilitating diseases; however, statistics show that eight-five to ninety percent of the individuals who apply for the certificate are abusing the system because they do not fit in the category of people with debilitating diseases.</p> <p>Chair Iona stated that although marijuana legalization is a viable way to boost a state’s economy, in the state of Colorado, revenues from medical marijuana sales represent only one percent of the state’s tax revenue, which clearly shows that it’s not a cure-all to take care of its economic problems.</p>	
<p><b>Chief’s Monthly Reports</b></p>	<ol style="list-style-type: none"> <li>1. Administrative and Technical Bureau – Recruitment, Records Section and Training Reports</li> <li>2. Fiscal Report</li> <li>3. Investigative Services Bureau – General Crimes/Major Crimes Section, Special Focus Section and Vice Section</li> <li>4. Bench Warrant Tracking</li> <li>5. Patrol Services Bureau Monthly Activity and Traffic Reports</li> <li>6. Community Oriented Policing Traffic and /Districting Reports for Līhu‘e, Kawaihau and Waimea</li> </ol>	

SUBJECT	DISCUSSION	ACTION
	<p data-bbox="430 318 1176 386">7. Chief's Announcements and Pertinent Updates 8. Update on the Department's 2016 Goals and Objectives</p> <p data-bbox="367 427 1575 610">Commissioner Agarwal asked Chief Perry if he had any information on the recent burglaries that have been occurring in the Kalāheo area to which Chief Perry replied, he doesn't have the information with him but would look into it and get back to her. He added that in cases like that, the Investigative Services Bureau would normally keep him informed of any incidents and together they would work on forming some strategies.</p> <p data-bbox="367 651 1575 946">Commissioner Mince asked if there is a timeframe for the Chief to submit his goals and what the time period is for him to achieve those goals. He added that the reason he asked is because the Commission in the process of evaluating the Chief. Chair Iona explained that the Chief would normally submit the Department's goals for the subsequent years at the end of each calendar year which will be incorporated into his evaluation form. He pointed out that because of budgetary constraints, some of the goals (although previously submitted) may have to be scaled back because it cannot be attained which is at no fault of the Chief and it shouldn't be held against him.</p> <p data-bbox="367 987 1575 1170">Chief Perry stated that relative to next year's goals, he welcomes any input from the Commissioners. He stated that in preparation of the goals, each of the different bureaus would submit their goals, which will be reviewed by himself and Deputy Chief Contrades, and from there they would work with the different bureaus on prioritizing each goal which will eventually become the Department's goals.</p> <p data-bbox="367 1211 1575 1287">Vice Chair Hertog stated that she would like to thank Chief Perry and his staff for staying ahead of the bad press that the rest of the islands got in relation to the untested rape kits.</p>	

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	<p><u>Chief’s Announcements:</u></p> <ul style="list-style-type: none"> <li>• Chief Perry shared a letter written by summer student intern Brandon Baroga thanking KPD for giving him the opportunity to work closely with the different bureaus.</li> <li>• KPD will be participating in a teleconference to talk about getting the Department of Hawaiian Homeland on board to assist with the enforcement efforts on Hawaiian homelands.</li> <li>• On November 5<sup>th</sup>, Chief Perry and members of his Administrative staff will be traveling to South Carolina to participate in an oral interview concerning KPD’s push towards accreditation.</li> <li>• On October 4<sup>th</sup>, Chief Perry will be traveling to O‘ahu to hopefully receive a \$31,000 grant which will be used to reduce drug threats and drug related crimes on Kaua‘i. The grant is made possible by the Department of the Attorney General, through the Governor’s Committee on Crime.</li> <li>• The closing date for receiving Assistant Chief Promotional inquiries is September 29<sup>th</sup>.</li> <li>• On Thursday, October 13<sup>th</sup>, Chief Perry, along with Deputy Chief Contrades and Assistant Robert Gausephol, will be traveling to O‘ahu to attend a news conference on the Statewide launch of Text-to-911 service. The event will be live streamed through the <a href="#">governor’s website</a>.</li> <li>• KPD will be participating in the 2016 Veteran’s Day Parade in November.</li> </ul>	
<p><b>Business KPC 2016-10</b></p>	<p><u>Discussion and possible action to approve the final draft of the Police Commission Rules of Administrative Practice and Procedure, and set a date for the public hearing.</u></p> <p>Vice Chair Hertog said that the draft language for the Commission’s rules have been provided to the Commissioners and they are ready for review. She stated that at the last Commission meeting, the Commissioners talked about someone who is incarcerated being able to file a complaint but does not have access to a notary, and so to address the issue, she asked Attorney Morimoto to work on the language which would allow the person to file a complaint with the Police Commission without having the complaint notarized, but in doing so, the individual must declare in writing under the penalty of law that the foregoing is true and</p>	

SUBJECT	DISCUSSION	ACTION
	<p>correct.</p> <p>Attorney Morimoto stated that the Department of Public Safety has a policy that kind of mirrors the court rules. He explained that when the state and federal courts started to use declarations in lieu of affidavits, the Department of Public Safety made a decision that notaries were no longer necessary for prisoners to file pleadings, which posed a problem for prisoners to file a complaint with the Police Department or, in this case, the Police Commission. And for that reason, he suggested amending the rules to allow declarations in lieu of affidavits.</p> <p>Vice Chair Hertog noted that this would be only for those who are incarcerated and no one else. Attorney Morimoto stated that the way the new language is written would include everyone, not only those who are in incarcerated. Vice Chair Hertog responded that she was of the understanding that the Commissioners agreed to accept complaints from prisoners because they are the ones who didn't have access to a notary.</p> <p>Attorney Morimoto stated that he would amend the process to reflect only those who are incarcerated.</p> <p>Chair Iona pointed out that the Commission may also want to look into how to prevent someone from filing a frivolous complaint, especially if they are not the person they claim to be, because if that happens, the burden will lie with the Commission because we accepted the complaint without actually seeing the person. Attorney Morimoto stated that the fact that the person who is filing the complaint is making a declaration under the penalty of law, it would subject that person to criminal prosecution if they made a false statement.</p> <p>Chair Iona asked who would pursue that avenue if that happens to which Attorney Morimoto replied, initially it would be investigated by the police department and if they find probable cause to make an arrest, then the case would be forwarded to the Office of the Prosecutor for review.</p>	

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	<p>Commissioner Mince pointed out that the way the rule is currently written says you have to have your complaint notarized because we want to know if the person who is filing the complaint is the actual person filing the complaint. But the way Attorney Morimoto has it written says a person who wants to file a complaint must have their complaint notarized but they don't have to tell the truth. But an inmate who doesn't have to have their complaint notarized must tell the truth, which brings up the question, shouldn't both languages be amended to mirror each other.</p> <p>Vice Chair Hertog responded that in the past, the Commission has received notarized complaints where people have not told truth so she will ask Attorney Morimoto to work on the language to try to shut that door if possible.</p> <p>In regard to regulating political activities, Vice Chair Hertog stated that KPD has a General Order that already addresses the issue, but the Police Commission does not, and so she asked Attorney Morimoto to craft some language which is before the Commission today; however, she was of the understanding that Chair Iona had some input, so he would need to rework that into the language.</p> <p>Chair Iona commented that he liked Attorney Morimoto's suggestions but there are some triggers involved. He explained that as Commissioners, their duties, powers and responsibilities <i>only</i> exist when they are conducting official board business in this room, but the moment the meeting is adjourned, those responsibilities are gone. Which brought up the question, as a private citizen (not as a Police Commissioner), is he prohibited from participating in any political campaigns outside of his duties as a Police Commissioner to which Attorney Morimoto replied no, as a private citizen, you are not prohibited from participating in any political activities; however, as a Commissioner, you are prohibited from using or attempting to use your official position to influence any political activities.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Mince stated that he was of the understanding that there are restrictions that prohibit a police officer from going out and endorsing a political candidate because it would violate KPD's General Order, asking shouldn't the same restriction apply to the Police Commission that we just can't go out and endorse a political candidate because we are Police Commissioners.</p> <p>Chair Iona stated that he agrees in a sense, but as volunteers, our duties only apply during Board and Commission proceedings and once the meeting is adjourned, our official duties as Police Commissioners end and we all become private citizens again. He shared about a month or so ago, he was involved in a political endorsement for the council race but it was done outside of Board and Commission proceedings and never inside. He pointed out that in drafting the language, it must written in a way that clearly defines what are our roles are in and outside of these Board and Commission proceedings.</p> <p>Commissioner Mince voiced his concerns that although the Charter gives the Police Commission the authority to write rules to regulate political activities in KPD, it was never done, asking, as members, shouldn't the rule apply to include the Police Commissioners. Vice Chair Hertog stated that in her own opinion, she would say yes, but would rather refer the question to Attorney Morimoto to which Attorney Morimoto replied, under the Charter, he would say yes.</p> <p>Commissioner Mince asked if we need to spell it out for the public, as well as for the new Commissioners, that the term "members" would include members of the Police Commission. Vice Chair Hertog stated that she would ask Attorney Morimoto to work with her on developing the language to satisfy the Chair's concerns in terms of what you can and cannot do on and off county time. Attorney Morimoto stated that he would craft the language and email it to the Commissioners for review and consideration, asking if there is a timeframe for adopting the rules to which Vice Chair Hertog replied, no, we are just trying to update our rules and we want to do it right.</p>	

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	With no further discussion, Chair Iona moved onto the next agenda item.	
<b>KPC 2016-11</b>	<p><u>Discussion and possible action to approve the final draft of the Chief of Police revised job description. (Position No. E-22).</u></p> <p>Vice Chair Hertog reported that she sent the job description to Chief Perry for one final review and he asked to make two small changes. The first change is on the top of Page 2. He added the words “whenever possible”. The second change is on the bottom of the page under heading <u>Desirable Knowledge</u>. Chief Perry added that the applicant must have knowledge of the Constitution of the United States, the Bill of Rights and the Constitution of the State of Hawai‘i.</p> <p>With no further discussion, Chair Iona called for a motion to accept the Chief’s Job Description as submitted.</p>	Commissioner Mince moved to accept the Chief’s Job Description. Commissioner Adams seconded the motion. The motion carried 5:0.
<b>KPC 2016-12</b>	<p><u>General discussion on medical marijuana use and how it’s going to affect the County.</u></p> <p>Chair Iona stated that he is not against the legalization of medical marijuana, but he’s adamantly opposed to the legalization of recreational marijuana, as well as other illegal drugs. He shared that the trend shows that medical marijuana is evolving into recreational marijuana, which means that the moral dilemmas surrounding marijuana use are fading. He added that he was especially concerned about countries as far away as China who are now in the United States operating medical marijuana dispensaries, which posed the question, do we want it to happen here in Hawai‘i. He stated that when the Hawai‘i Legislature first looked into a bill to establish a system to regulate the use of medical marijuana, the legislators (he believes) did not take into account that things like that could happen here in Hawai‘i, which is why he wanted to bring his concerns to the Commission and the Chief to try to work</p>	



SUBJECT	DISCUSSION	ACTION
	<p>on a solution to prevent that from happening.</p> <p>Chief Perry stated that if medical marijuana does roll into recreational marijuana, then KPD would have to establish another bureau which will have to be funded to regulate the edibles and alike. He stated that situation represents a slippery slope and hopefully we can all look back at the State of Colorado and see that it is not as good as people projected it would be; both economically and for the population as a whole.</p> <p>Commissioner Agarwal stated that based on the information she received from the speakers at conference, she is very concerned about seeing an increase in crime and traffic accidents due to the misuse of marijuana, and suggested that the Police Commissions and the Police Chiefs work together to appeal the law and coordinate with the Mayors who have opposed the law.</p> <p>Vice Chair Hertog stated that the one thing that struck her the most (and this is for those who did not attend the conference) was that there seems to be more marijuana retail stores in the State of Colorado than there are Starbucks and McDonalds combined. She shared that she was grateful to the Chief for inviting industrial marijuana grower John Taylor from the State of Colorado to the conference. Mr. Taylor is making so much money selling recreational marijuana that he can afford to bring people in from the neighboring states and offer them 401K's plus two weeks of paid vacation because his company is hauling in hundreds of dollars a year.</p> <p>Vice Chair Hertog stated that the good thing about Hawai‘i is that it has a closed system compared to the State of Colorado where a person can go from one retail store to another and nobody would know how much recreational marijuana that person brought.</p> <p>Chief Perry added that another issue that he was not quite clear on had to do with the restrictions by the federal government with respect to grants and alike because you have to have a drug-free workplace.</p>	

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	<p>Chair Iona stated that he thought that the comment made by the millionaire gentleman was pretty amazing in which he said “If you think about getting rich quick, you’re not” because federally he couldn’t apply for a loan and he had to pay out of his own pocket forty million dollars to build his warehouse. Vice Chair Hertog added that the gentleman had to lease a bank to store his money.</p> <p>Chair Iona stated that as Commissioners, we should work with our constituents and other law enforcement agencies in Hawaii to bring the information from the conference to the state legislators so they can see for themselves that by legalizing recreational marijuana or decriminalizing the drug, it has the potential of becoming a major issue, and as lawmakers, they have to be cautious and not rush into making a decision on recreational marijuana until they have all the facts.</p> <p>Chief Perry ended on a more personal note. It appears that some of his counterparts who have retired have started working in the marijuana industry because of the money that they are able to earn, which he finds very disheartening but that’s the reality of what the lure money can do and you compromise what you have been doing your whole life as a law enforcement officer.</p>	
<p><b>KPC 2016-13</b></p>	<p><u>A note of gratitude from Ms. Pat Hunter-Williams to Chair Iona and Members of the Kaua‘i Police Commission, thanking the Commission and the Kaua‘i Police Department for supporting the Kaua‘i Police Activity League flag football youth program.</u></p> <p>Chair Iona thanked KPAL for all that they do for the keiki’s, and as an individual, he will continue to do whatever he can to support the program. With no further comments, Chair Iona called for a motion to accept the letter.</p>	<p>Commissioner Adams moved to accept the letter. Commissioner Agarwal seconded the motion. The motion carried 5:0.</p>
<p><b>KPC 2016-14</b></p>	<p><u>Public announcement for the following notarized complaints that were filed with the Police Commission.</u></p>	

SUBJECT	DISCUSSION	ACTION
	<p><u>KPC 2016-001:</u> After a diligent inquiry by the Commission, in which the Commissioners reviewed the footage of the body worn camera, the Kaua‘i Police Commission found that there was insufficient evidence to support the allegation of unprofessionalism on the part of the officer. All pertinent parties have been notified in writing of the Commission’s decision. This officially concluded the Commission’s review of notarized complaint KPC 2016-001.</p> <p><u>KPC 2016-002:</u> After a diligent inquiry by the Commission, in which the Commissioners reviewed all available materials, the Kaua‘i Police Commission found that there was insufficient evidence to support the allegations of rude and behavior unbecoming of an off-duty officer. All pertinent parties have been notified in writing of the Commission’s decision. This officially concluded the Commission’s review of notarized complaint KPC 2016-002.</p> <p><u>KPC 2016-004:</u> After a diligent inquiry by the Commission, in which the Commissioners reviewed the footage of the body worn camera, including listening to the audio, the Kaua‘i Police Commission determined that there was insufficient evidence to support the allegations of rude, unprofessional and condescending behavior on the part of the officer. All pertinent parties have been notified in writing of the Commission’s decision. This officially concluded the Commission’s review of notarized complaint KPC 2016-004.</p> <p><u>KPC 2016-005:</u> After reviewing the complaint, the Commissioners have determined that the complaint was a third-party complaint and therefore did not uphold the complaint. All pertinent parties have been notified in writing of the Commission’s decision. This officially concluded the Commission’s review of notarized complaint KPC 2016-005.</p>	

SUBJECT	DISCUSSION	ACTION
<b>Announcements</b>	<p>Next scheduled meeting – 9:00 a.m. on Friday, October 28, 2016, at the Mo'ikeha Building in Meeting Room 2A/2B. Followed by Executive Session.</p> <p>At 10:03 a.m. Vice Chair Hertog cited the Hawai'i Revised Statutes to bring the meeting into Executive Session.</p>	
<b>ES KPC 2016-023</b>	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission discuss the Chief's Annual Performance Evaluation, where consideration of matters affecting privacy will be involved; provided that if the Chief requests an open meeting, an open meeting shall be held. And to consult with attorney as to the powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	
<b>ES KPC 2016-023</b>	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this executive session is for the Commission to discuss the Chief's annual performance evaluation, where consideration of matters affecting privacy will be involved; provided that if the Chief requests a open meeting, an open meeting shall be held. And to consult with its attorney as to the powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	
<b>ES KPC 2016-024</b>	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this executive session is for the Commission to approve the executive session minutes of August 10, 2016 and August 26, 2016, and to consult with its attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	
<b>ES KPC 2016-027</b>	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (2) (4), the purpose of this Executive is for the Commission to consult with its attorney as to the powers, duties, privileges, immunities, and liabilities as it relates to a request for an update on an sexual assault investigation that occurred in 1994.	
<b>ES KPC 2016-028</b>	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (2) (4), the purpose of this Executive is for the Commission to consult with its attorney as to the powers, duties, privileges, immunities, and liabilities as it relates to policies in the Kaua'i Community Correctional Center that does not allow an inmate from notarizing a complaint.	

SUBJECT	DISCUSSION	ACTION
<b>ES KPC 2016-029</b>	Pursuant to the Hawai'i Revised Statutes §92-4, §92-5 (a) (4), the purpose of this Executive Session is for the Commission to consult with its attorney on issues pertaining to the Commission's and the County powers, duties, privileges, immunities and/or liabilities as it relates to an update on a communication dated April 13, 2016 regarding an inquiry on the Police Commission actions as they relate to a pending investigation of a major traffic accident that occurred in Kekaha at the Kikiaola Small Boat Harbor.	
<b>Enter into Executive Session</b>	Chair Iona called for a motion to enter into Executive Session.	Commissioner Adams moved to enter into Executive Session. Commissioner Agarwal seconded the motion. The motion carried 5:0.  At 10:05 a.m. the Commissioners entered into Executive Session.
<b>Return to Open Session to Ratify the actions taken in Executive Session</b>	At 11:04 the Commissioners reconvened in Open Session. Chair Iona called for a motion to ratify the actions taken in Executive Session.	Commissioner Adams moved to ratify the actions taken in Executive Session for the following items. Commissioner Mince seconded the motion. The motion carried 5:0.  ES KPC 2016-023: Chief's 2016 Performance Evaluation is due on September 30, 2016.  ES KPC 2016-024: Motion carried 5:0 to approve the Executive Session meeting

SUBJECT	DISCUSSION	ACTION
		<p>minutes of August 10, 2016 and August 26, 2016</p> <p>ES KPC 2016-025: Motion carried 5:0 to defer the matter pending the outcome of the Hawai'i Supreme Court Ruling to determine the powers of the Mayor, and the powers of the Police Commission.</p> <p>ES KPC 2016-028: Update from Deputy County Attorney Peter Morimoto.</p> <p>ES KPC 2016-029: Update from Deputy County Attorney Peter Morimoto.</p>
<b>Adjournment</b>	With no further business to conduct, Chair Iona called for a motion to adjourn the meeting.	<p>Commissioner Adams moved to adjourn. Commissioner Mince seconded the motion. The motion carried 5:0.</p> <p>At 11:06 a.m. the meeting adjourned.</p>

Kaua'i Police Commission  
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Submitted by: \_\_\_\_\_  
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: \_\_\_\_\_  
Charles C.C. Iona, Chair

( ) Approved as circulated on

(x) Approved as amended on: **October 28, 2016**